



September 13, 1999

Commissioner Susan Combs  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR99-2538

Dear Commissioner Combs:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your tracking number for this request is TDA-OR-99-0066. Your request was assigned ID# 127766.

The Texas Department of Agriculture (the "department") received a written request for "the two audits conducted by [the department] during 1998 of the facilities and records maintained by Del Valley [sic] Grain, Inc." You explain that although the department does not possess any documents regarding Del Valle Grain ("Del Valle") entitled "audit report," you believe other documents held by the department to be responsive to the request. You inquire as to the extent to which the documents at issue are made confidential under section 14.003(d) of the Agriculture Code, and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The department regulates the licensure and operation of certain grain warehouses in Texas. Agric. Code §§ 14.001 *et seq.* Section 14.003(d) of the Agriculture Code provides as follows:

(d) The following information prepared by the department in the course of its regulatory authority under this subchapter or required to be submitted to the department in accordance with the department's administration of this subchapter is confidential and not subject to public disclosure:

(1) *inspection reports* containing information regarding grain inventory; and

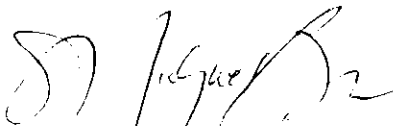
(2) financial information provided to the department to establish net worth for purposes of licensure. [Emphasis added.]

You have submitted two documents to this office as being responsive to the request: a "Grain Warehouse Enforcement Report," with attachments, and a "Public Grain Warehouse Investigation Narrative & Exhibits," with attachments. You explain that although the enforcement report is not an inspection report for purposes of section 14.003, the three attachments each contain information regarding Del Valle's grain inventory. After reviewing these attachments, we conclude that the "Grain Warehouse Examination Report" and the "Grains Record Examination" both constitute "inspection reports containing information regarding grain inventory" and thus must be withheld in their entirety pursuant to section 14.003. The remaining attachment, which you characterize as a "notice to comply" that was sent to representatives of Del Valle, does not constitute an "inspection report"; this document is not made confidential under section 14.003(d). Consequently, the department must release both the "enforcement report" and the "notice to comply" to the requestor.

The second document at issue, the "Public Grain Warehouse Investigation Narrative & Exhibits," is clearly an "inspection report[]" containing information regarding grain inventory" as envisioned by section 14.003(d). *See also* Ag. Code §§ 14.014, .024 (authorizing inspections by department). Given the broad language of section 14.003(d), we believe that the confidentiality required by this section extends to all information contained in the report, including all attachments, and not only to those portions of the report that reveal details of Del Valle's grain inventory.<sup>1</sup> The department, therefore, must withhold the inspection report in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Burns", written over a horizontal line.

Michael J. Burns  
Assistant Attorney General  
Open Records Division

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<sup>1</sup>Nor do we believe that the fact that employees of Del Valley have released such information to certain members of the public acts as a waiver of this statutory confidentiality. The requirement to maintain the inspection report as confidential pertains only to the department, not to the parties from whom the information was obtained.

MJB/RWP/nc

Ref.: ID# 127766

Encl. Submitted documents

cc: Mr. Raymond A. Crowley  
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(w/o enclosures)